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United States District Court Judge Cathy Seibel  
United States District Court  
300 Quarropas Street  
White Plains, New York 10601

Re: Westley B. Artope v. Paul Bluhdorn and Paige Bluhdorn  
11-CIV-5891

Dear Judge Seibel:

We represent a defendant, Paige Bluhdorn, 353 Sarles Street, Mount Kisco, New York 10549, in the above entitled action; and this letter is our request for a pre-motion conference in accordance with your individual practices [2(A)].

By complaint dated August 16, 2011, it is claimed that the defendant, Paige Bluhdorn, violated the rights of the plaintiff, Westley B. Artope, under the Federal Fair Labor Standards Act, 29 U.S.C. Section 201, New York Labor Law Section 650, and New York Executive Law Section 290.

It is respectfully requested by the defendant, Paige Bluhdorn, that she be granted permission to file and serve her motion to dismiss the four (4) causes of action under Federal Rule of Civil Procedure 12(b)(6) because the pleading dated August 16, 2011, does not show, with respect to her, that liability is plausible and beyond mere speculation; in reality the plaintiff, Westley B. Artope, is trying to use the power of the Federal Judiciary to squeeze out a settlement.

With respect to the first three (3) causes of action in his complaint dated August 16, 2011, the plaintiff, Westley B. Artope, is unable to plead facts (as distinct from mere conclusions) that the defendant, Paige Bluhdorn, was his employer, even under the most expansive definition. There are no facts set forth in his complaint dated August 16, 2011, that establish her control when viewed through the prism of the economic realities of the situation, from October 1, 2008 to February 12, 2009.

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With respect to the fourth cause of action of the plaintiff, Westley B. Artope, his pleading dated August 16, 2011, is also deficient because it alleges no facts to distinguish what he is complaining about, either a sex-based hostile work environment or a tangible employment action. He pleads only conclusions and this is insufficient.

It is respectfully requested by the defendant, Paige Bluhdorn, that a pre-motion conference be scheduled in accordance with your individual practices [2(A)] and that the defendant, Paige Bluhdorn, be granted leave to file and serve her motion under Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint of the plaintiff, Westley B. Artope, dated August 16, 2011.

Yours truly,



JOHN H. HERSH (JH 1548)

JHH:gl

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*I entertain serious doubts as to the validity of any such motion. It seems the Complaint plausibly pleads that Plaintiff worked for both Defendants, although perhaps Defendant means to argue Defendant Paige Bluhdorn does not meet the statutory definition of employer? If so, she shall clarify before the pre-motion conference. It also seems clear that Plaintiff causes hostile work environment (§ 27) and tangible employment action (§s 29-33), as well as retaliation (§s 34-36), although perhaps inadvertently.*

*Pre-motion conference to be held on: April 19, 2012 @ 12:00 noon. Plaintiff shall clarify his argument re: claim 1-3 2 weeks in advance by letter no more than 3 pages, & Plaintiff shall state his position 1 week in advance by letter no more than 3 pages. So Ordered - Cathy Seibel 2/22/12*